No. 272.

Motion to advance and

In the Supreme Court of the United States.

Filed Jan. 28, 1901.

October Term, 1900.

MORTIMER WEBSTER, *Plaintiff in Error*,

vs.

THE CITY OF FARGO; JAMES E. ROWE, as Auditor of the the City of Fargo; D. C. ROSS as County Treasurer of Cass County, and O. J. OLSON, as Auditor of Cass County, *Defendants in Error*.

No. 272.

MOTION OF PLAINTIFF IN ERROR TO ADVANCE.

In the Supreme Court of the United States.

October Term, 1901.

MORTIMER WEBSTER, *Plaintiff in Error,*

vs.

THE CITY OF FARGO; JAMES M. ROWE, as Auditor of the the City of Fargo; D. C. ROSS as County Treasurer of Cass County, and O. J. OLSON, as Auditor of Cass County, *Defendants in Error.*

To the above named Defendants in Error and Charles J. Mahnken and S. B. Finney, their Attorneys.

YOU WILL PLEASE TAKE NOTICE, That the Plaintiff in Error will apply to the supreme court of the United States, at the court room in the capitol building of at Washington, on the twenty-eighth day of January, 1901, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for a rule or order advancing the above entitled cause for hearing and fixing the day of hearing thereof at or about the twenty-fifth day of February, 1901, for the reason that other causes involving the same questions, have been advanced and set for hearing on said date. A copy of said application is herewith served upon you.

Dated January 21, 1901.

SETH NEWMAN,
BURLEIGH F. SPALDING,
Attorneys for Plaintiff in Error.

In the Supreme Court of the United States.

October Term, 1901.

MORTIMER WEBSTER, *Plaintiff in Error.*

vs.

THE CITY OF FARGO; JAMES M. ROWE, as Auditor of the City of Fargo; D. C. ROSS as County Treasurer of Cass County, and O. J. OLSON, as Auditor of Cass County, *Defendants in Error.*

MOTION TO ADVANCE CAUSE.

Now comes the plaintiff in error by its counsel and moves this Honorable Court to advance this cause and set it down for hearing on a particular day, as near in the future as may be convenient to the court, and as reasons therefor states:

The matter and the only matter in controversy in this cause is the validity of a statute of the State of North Dakota, to-wit: Section 2280 of the Revised Codes of said state, which is as follows:

"ASSESSMENTS FOR IMPROVEMENTS—HOW MADE.] Whenever any work or improvements mentioned in the preceding section shall have been determined upon and the contract let therefor, the city engineer shall forthwith calculate the amount to be assessed for such improvement for each lot or parcel of ground abutting or abounding upon such improvement. And in estimating the assessment he shall take the entire cost of such improvement and divide the same by the number of feet fronting or abutting upon the same, and the quotient shall be the sum to be assessed per front foot so bound-

ing or abutting, and said estimate shall be filed with the city auditor and shall be presented to the city council for its approval at the first meeting held thereafter. The city auditor shall cause said estimate of the city engineer, together with a notice of the time and place when the council will meet to approve of the same, to be published in the official newspaper of the city for at least ten days prior to the meeting of the city council to approve the same."

Under which section of said statute a special assessment was laid upon the property of the plaintiff in error and charged against his said property abutting upon that part of the street of said city to be paved according to the frontage thereof on said street, and the question arises in a suit brought by the plaintiff in error to enjoin the sale of his property under such assessment and to cancel and vacate said assessment as a cloud upon the title to his said property.

The cause comes to this court on a writ of error from the supreme court of the state of North Dakota, which court held that said statute was not in violation of the fourteenth amendment of the constitution of the United States, and that such assessment was legal and valid, following its decisions in cases arising under the same statute prior to the decision of the case of Norwood vs. Baker in this court.

The questions arising in this case are practically the same as those arising in the case of French vs. Barber Asphalt Paving Company, number 498 on the docket of this court, and practically the same as those arising in the case of the City of Detroit vs. Parker, number 411 on the docket of this court, both of which cases have been advanced for hearing, as plaintiff in error is informed, and set for hearing on or about the 25th day of February, 1901.

To the end therefore that this cause may be heard

in this court at or about the time of said case of French vs. Barber Asphalt Paving Company and the case of the City of Detroit vs. Parker, plaintiff in error prays the court for a rule or order advancing this cause to be heard at or near the time of hearing fixed by the court in said two cases.

Dated January 21, 1901.

SETH NEWMAN,

BURLEIGH F. SPALDING,

Attorneys and Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

October Term, 1901.

MORTIMER WEBSTER, *Plaintiff in Error*,

vs.

THE CITY OF FARGO; JAMES M. ROWE, as Auditor of the City of Fargo; D. C. ROSS as County Treasurer of Cass County, and O. J. OLSON, as Auditor of Cass County, *Defendants in Error*.

STATE OF NORTH DAKOTA,)
) ss.
COUNTY OF CASS.)

Seth Newman, being first duly sworn, says: He is over the age of twenty-one years. That on the 22d day of January, 1901, he served the foregoing notice and motion on Charles J. Mahnken and S. B. Pinney, attorneys for the defendants in error in the above entitled cause, each personally by delivering to and leaving with each a true copy thereof, in said city of Fargo, in said county and state.

SETH NEWMAN.

Subscribed and sworn to before me this 22d day of January, A. D. 1901.

[Notarial Seal.] W. S. STAMBAUGH,
Notary Public, Cass County, North Dakota.